IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

CRL.A.No. 699 of 2003(A)

CC.372/1999 of CHIEF JUDICIAL MAGISTRATE, KASARAGOD
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APPELLANT: COMPLAINANT

M/S.KASARGOD SELF EMPLOYEES FINANCING COMPANY, KASARGOD, REPRESENTED BY ITS POWER OF ATTORNEY HOLDER, K.SATHEESHAN.

BY ADV. SRI.K.JAJU BABU

RESPONDENTS: ACCUSED & STATE
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1. T.H.MUHAMMED SHAFI,
S/O. HASANKUTTY, C.T.H.HOUSE, NELLIKUNNU.

2. THE STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.GRASHIOUS KURIAKOSE
PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.699/2003-A

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Dated this the 24th day of September, 2007

J U D G M E N T

The appellant is the complainant in C.C.No.372/1999 in the file of the Chief Judicial Magistrate, Kasargode, with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused was acquitted. The case is that the complainant is a partnership firm and the accused had borrowed a sum of Rs.50,000/- from the firm and issued the impugned cheque dated 21/04/1999, which when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent demanding payment was served but no reply was received.

2. The evidence adduced in the matter consisted of the testimony of PW.1 and Exts.P1 to P7 and defence examined DW.1 and got marked Exts.D1 to D7. Exts.D2 to D7 are the documents produced by the complainant on the basis of the application filed by the accused. DW.1 is the accused.

3. PW.1, the power of attorney holder of the complainant has testified as to the transactions and has proved Exts.P1 to P7 that included Ext.P2 cheque and dishonour memo. It is the case of the defence that the accused had availed a loan of Rs.10,000/- from the complainant company and towards security of the same issued a blank cheque, which has been converted into Ext.P2 and presented. DW.1 has also produced Ext.D1 carbon copy of the statement and conditions showing the details of the loan for Rs.10,000/-. The date of the loan is mentioned 10/11/1997, the date of maturity as 18/02/1998 and the amount is to be repaid in 100 days equal instalments. The accused filed an application to get produced the documents with respect to the alleged transaction including the account books and registers for the relevant period. Exts.D2 to D7 are the documents produced in pursuance of the above application. The account books and registers were not produced as the same was not available as per the complainant. Exts.D1 to D2 are the documents with respect to the loan for Rs.10,000/- allegedly availed on 10/11/1997 and Ext.D3 is with respect to the loan availed on 20/04/1998. It is pointed out that the case of the accused is that he had only once availed a loan of Rs.10,000/-. Ext.D3 would show that another loan Rs.10,000/- was availed on 20/04/1998. Exts.D4 to D7 are with respect to the loan for

Rs.50,000/-. DW.1 has denied his signatures in Exts.D4 to D7. DW.1 has admitted that Exts.D2 and D3 are the documents signed by him and the same contained the details filled up when he affixed his signature. According to him he has only availed a loan in 1997 and the cheques issued at the time was not returned despite the fact that the amounts were repaid. He has denied the execution of Exts.D4 to D7. The court below has compared the signatures and found that it appeared that the above signatures were drawn by a stranger by looking at the genuine signature of the accused. On a perusal, I find that the observation of the court below cannot be ruled out totally. All the same, I find that it would be desirable to have expert opinion as to the admitted and the allegedly forged signatures.

4. In the circumstances, the order of the court below acquitting the accused is set aside. The matter is remitted back to the trial court. The admitted and disputed signatures are to be forwarded to the hand writing expert and the expenses for the same is to be met by the complainant. The matter will be disposed of on merits after the receipt of the expert opinion and after affording opportunity to adduce any further evidence if they so desire.

The counsel for the accused has sought for exemption for him from personal appearance before the court below. The above is granted till the time the opinion from the handwriting expert is received. The criminal appeal is disposed of as above. The matter will be posted before the court below on 29/10/2007.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.699/2003-A

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J U D G M E N T

24th September, 2007